

PART II - CONTRACT CLAUSES

SECTION I – CONTRACT CLAUSES

TABLE OF CONTENTS

I.1	FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998).....	1
I.2	FAR 52.202-1 DEFINITIONS (JUL 2004).....	1
I.3	FAR 52.203-3 GRATUITIES (APR 1984)	1
I.4	FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES(APR 1984)	1
I.5	FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)	1
I.6	FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)	1
I.7	FAR 52.203-8 CANCELLATION, RECISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997).....	1
I.8	FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)	1
I.9	FAR 52.203-12 LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005)	1
I.10	FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)	1
I.11	FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003) ALTERNATE 1 (OCT 2003).....	1
I.12	FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2006).....	4
I.13	FAR 52.208-8 PERSONAL REQUIRED SOURCES FOR HELIUM USAGE DATA (APR 2002)	4
I.14	FAR 52.208-9 CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (JUNE 2006)	5
I.15	FAR 52.209-6 PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT (JAN 2005).....	5

I.16	FAR 52.215-2 AUDIT AND RECORDS – NEGOTIATION (JUN 1999).....	5
I.17	FAR 52.215-8 ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT (OCT 1997).....	5
I.18	FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS (OCT 1997).....	5
I.19	FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATION (OCT 1997).....	5
I.20	FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)	5
I.21	FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005) ...	5
I.22	FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997).....	6
I.23	FAR 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA – MODIFICATIONS (OCT 1997).....	6
I.24	FAR 52.216-7 ALLOWABLE COST AND PAYMENTDEAR 952.216-7, ALLOWABLE COST AND PAYMENT (DEC 2002); ALTERNATE II	6
I.25	FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999).....	6
I.26	FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JULY 2005)	7
I.27	FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004) ..	7
I.28	FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JUL 2005) – ALTERNATE II (OCT 2001).....	7
I.29	FAR 52.219-16 LIQUIDATED DAMAGES – SUBCONTRACTING PLAN (JAN 1999)	7
I.30	FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM – DISADVANTAGED STATUS AND REPORTING (OCT 1999)	7
I.31	FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)	7
I.32	FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990).....	7
I.33	FAR 52.222-3 CONVICT LABOR (JUN 2003)	8

I.34	FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JUL 2005).....	8
I.35	FAR 52.222-6 DAVIS-BACON ACT (JUL 2005).....	8
I.36	FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988).....	8
I.37	FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988).....	8
I.38	FAR 52.222-9 APPRENTICES AND TRAINEES (JULY 2005).....	8
I.39	FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988).....	8
I.40	FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (JULY 2005).....	8
I.41	FAR 52.222-12 CONTRACT TERMINATION—DEBARMENT (FEB 1988).....	8
I.42	FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988).....	8
I.43	FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988).....	8
I.44	FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988).....	8
I.45	FAR 52.222-16 APPROVAL OF WAGE RATES (FEB 1988).....	8
I.46	FAR 52.222-17 LABOR STANDARDS FOR CONSTRUCTION WORK—FACILITIES CONTRACTS (FEB 1988).....	8
I.47	FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996).....	8
I.48	FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999).....	9
I.49	FAR 52.222-26 EQUAL OPPORTUNITY (APR 2002).....	9
I.50	FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999).....	9
I.51	FAR 52.222-30 DAVIS-BACON ACT—PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD) (DEC 2001).....	9
I.52	FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001).....	9
I.53	FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998).....	9

I.54	FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001).....	9
I.55	FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004).....	9
I.56	FAR 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (JUL 2005)	9
I.57	FAR 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989).....	9
I.58	FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (APR 2006).....	9
I.59	FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) ALTERNATE I (JUL 1995).....	10
I.60	FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003).....	12
I.61	FAR 52.223-6 DRUG-FREE WORKPLACE (MAY 2001).....	12
I.62	FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (AUG 2000).....	12
I.63	FAR 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)	12
I.64	FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)	12
I.65	FAR 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995).....	12
I.66	FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003).....	12
I.67	FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984).....	12
I.68	FAR 52.224-2 PRIVACY ACT (APR 1984).....	12
I.69	FAR 52.225-1 BUY AMERICAN ACT – SUPPLIES (JUN 2003).....	12
I.70	FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (MAR 2005)	13
I.71	FAR 52.227-10 FILING OF PATENT APPLICATIONS (APR 1984).....	13
I.72	FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987).....	13
I.73	FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998).....	14

I.74	FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 2005)	14
I.75	FAR 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984) ..	14
I.76	FAR 52.232-17 INTEREST (JUN 1996).....	14
I.77	FAR 52.232-18 AVAILABILITY OF FUNDS (APR 1984).....	14
I.78	FAR 52.232-22 LIMITATION OF FUNDS (APR 1984)	14
I.79	FAR 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)	14
I.80	FAR 52.232-25 PROMPT PAYMENT (OCT 2003) – ALTERNATE I (FEB 2002) ..	14
I.81	FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER – CENTRAL CONTRACTOR REGISTRATION (OCT 2003)	14
I.82	FAR 52.233-1 DISPUTES (JUL 2002) – ALTERNATE I (DEC 1991).....	14
I.83	FAR 52.233-2 SERVICE OF PROTEST (AUG 1996) – AS MODIFIED BY DEAR 952.233-2 SERVICE OF PROTEST	14
I.84	FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) – ALTERNATE I (JUN 1985)	15
I.85	FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)	15
I.86	FAR 52.234-4 EARNED VALUE MANAGEMENT SYSTEM (JULY 2006).....	15
I.87	FAR 52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)	15
I.88	FAR 52.236-19 ORGANIZATION AND DIRECTION OF THE WORK (APR 1984)	15
I.89	FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984).....	15
I.90	FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)	15
I.91	FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984).....	15
I.92	FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001).....	15
I.93	FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997).....	15
I.94	FAR 52.242-13 BANKRUPTCY (JUL 1995).....	15

I.95 FAR 52.243-2 CHANGES – COST REIMBURSEMENT (AUG 1987) – ALTERNATE II (APR 1984) & ALT III & ALT IV	15
I.96 FAR 52.243-7 NOTIFICATION OF CHANGES (APR 1984)	15
I.97 FAR 52.244-2 SUBCONTRACTS (AUG 1998) ALTERNATE I (JAN 2006)	15
I.98 FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)	18
I.99 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2004)	18
I.100 FAR 52.245-5 GOVERNMENT PROPERTY (COST REIMBURSEMENT, TIME- AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (MAY 2004)	19
I.101 FAR 52.245-19 GOVERNMENT PROPERTY FURNISHED “AS IS” (APR 1984). 19	
I.102 FAR 52.246-25 LIMITATION OF LIABILITY – SERVICES (FEB 1997)	19
I.103 FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)	19
I.104 FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUNE 2003) ... 19	
I.105 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)	20
I.106 FAR 52.247-67 SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (JUN 1997) .. 20	
I.107 FAR 52.247-68 REPORT OF SHIPMENT (REPSHIP) (FEB 2006)	20
I.108 FAR 52.248-1 VALUE ENGINEERING (FEB 2000)	20
I.109 FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004)	20
I.110 FAR 52.249-14 EXCUSABLE DELAYS (APR 1984)	20
I.111 FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)	20
I.112 FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)	20
I.113 FAR 52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)	20
I.114 FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)	20
I.115 FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)	20
I.116 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)	20

I.117 DEAR 952.204-2 SECURITY (MAY 2002)	21
I.118 DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997).....	23
I.119 DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994)	24
I.120 DEAR 952.204-73 FACILITY CLEARANCE (MAY 2002)	25
I.121 DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000)	28
I.122 DEAR 952.204-76 CONDITIONAL PAYMENT OF FEE OR PROFIT – SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION (JAN 2004).....	29
I.123 DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)	33
I.124 DEAR 952.208-70 PRINTING (APR 1984)	33
I.125 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997) 34	
I.126 DEAR 952.215-70 KEY PERSONNEL (DEC 2000).....	36
I.127 DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)	37
I.128 DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984).....	37
I.129 DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994).....	37
I.130 DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)	38
I.131 DEAR 952.231-71 INSURANCE-LITIGATION AND CLAIMS (APR 2002)	38
I.132 DEAR 952.233-4 NOTICE OF PROTEST FILE AVAILABILITY (SEP 1996)	41
I.133 DEAR 952.233-5 AGENCY PROTEST REVIEW (SEP 1996).....	42
I.134 DEAR 952.245-5 GOVERNMENT PROPERTY (COST REIMBURSEMENT, TIME-AND-MATERIALS, OR LABOR-HOUR CONTRACTS)	42
I.135 DEAR 952.247-70 FOREIGN TRAVEL (DEC 2000)	42
I.136 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005) 42	
I.137 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (DEC 2000)	46

I.138 DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2000).....	48
I.139 DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000) (DEVIATION)	48
I.140 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005) ..	49
I.141 DEAR 970.5223-1 -- INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000).....	51
I.142 DEAR 970.5227-1 RIGHTS IN DATA—FACILITIES (DEC 2000) (DEVIATION). 54	
I.144 DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002).....	61
I.145 DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002).....	61
I.146 DEAR 970.5227-6 PATENT INDEMNITY—SUBCONTRACTS (DEC 2000).....	62
I.147 DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002).....	62
I.148 DEAR 970.5227-10 PATENT RIGHTS – MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (AUG 2002).....	63
I.149 DEAR 970.5227-11 PATENT RIGHTS--MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000).....	77
I.150 DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000) (ALTERNATE I) (DEC 2000).....	85
I.151 DEAR 970.5231-4 PRE-EXISTING CONDITIONS (DEC 2000) (ALTERNATE II) (DEC 2000).....	86

SECTION I

CONTRACT CLAUSES

I.1 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the CO will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://acquisition.gov/far/index.html>.

I.2 FAR 52.202-1 DEFINITIONS (JUL 2004)

I.3 FAR 52.203-3 GRATUITIES (APR 1984)

I.4 FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

I.5 FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

I.6 FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

I.7 FAR 52.203-8 CANCELLATION, RECISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

I.8 FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

I.9 FAR 52.203-12 LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005)

I.10 FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

I.11 FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003) ALTERNATE 1 (OCT 2003)

(a) Definitions. As used in this clause-

“Central Contractor Registration (CCR) database” means the primary Government repository for Contractor information required for the conduct of business with the Government.

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System+4 (DUNS+4) number” means the DUNS number means the number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

“Registered in the CCR database” means that-

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
 - (2) The Government has validated all mandatory data fields and has marked the record “Active”.
- (b)
- (1) The Contractor shall be registered in the CCR database by December 31, 2003. The Contractor shall maintain registration during performance and through final payment of this contract.
 - (2) The Contractor shall enter, in the block with its name and address on the cover page of the SF 30, Amendment of Solicitation/Modification of Contract, the annotation “DUNS” or “DUNS+4” followed by the DUNS or DUNS+4 number that identifies the Contractor’s name and address exactly as stated in this contract. The DUNS number will be used by the CO to verify that the Contractor is registered in the CCR database.
- (c) If the Offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.
- (1) An Offeror may obtain a DUNS number-
 - (i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or
 - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.
 - (2) The Offeror should be prepared to provide the following information:
 - (i) Company legal business name.
 - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
 - (iii) Company physical street address, city, state and Zip Code.

- (iv) Company mailing address, city, state and Zip Code (if separate from physical).
 - (v) Company telephone number.
 - (vi) Date the company was started.
 - (vii) Number of employees at your location.
 - (viii) Chief executive officer/key manager.
 - (ix) Line of business (industry).
 - (x) Company Headquarters name and address (reporting relationship within your entity).
- (d) If the Offeror does not become registered in the CCR database in the time prescribed by the CO, the CO will proceed to award to the next otherwise successful registered Offeror.
- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (g) (1) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible CO a minimum of one business day's written notification of its intention to:
- (A) Change the name in the CCR database;
 - (B) Comply with the requirements of Subpart 42.12 of the FAR; and

- (C) Agree in writing to the timeline and procedures specified by the responsible CO. The Contractor must provide with the notification sufficient documentation to support the legally changed name.
- (ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(c) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.
- (2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor’s CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of payment” paragraph of the EFT clause of this contract.
- (h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

I.12 FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2006)

I.13 FAR 52.208-8 PERSONAL REQUIRED SOURCES FOR HELIUM USAGE DATA (APR 2002)

- (a) Definitions.

“Bureau of Land Management,” as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

“Federal helium supplier” means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office’s Authorized List of Federal Helium Suppliers available via the Internet at <http://www.nm.blm.gov/>.

“Major helium requirement” means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square

inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) Requirements—

- (1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.
- (2) The Contractor shall provide to the CO the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier—
 - (i) The name of the supplier;
 - (ii) The amount of helium purchased;
 - (iii) The delivery date(s); and
 - (iv) The location where the helium was used.

(c) Subcontracts. The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves a major helium requirement.

I.14 FAR 52.208-9 CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (JUNE 2006)

I.15 FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT (JAN 2005)

I.16 FAR 52.215-2 AUDIT AND RECORDS – NEGOTIATION (JUN 1999)

I.17 FAR 52.215-8 ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT (OCT 1997)

I.18 FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS (OCT 1997)

I.19 FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATION (OCT 1997)

I.20 FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)

I.21 FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)

I.22 FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

- (a) The Contractor shall make the following notifications in writing:
 - (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
 - (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Contractor shall—
 - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide the ACO or designated representative ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the contractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

I.23 FAR 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA – MODIFICATIONS (OCT 1997)

I.24 FAR 52.216-7 ALLOWABLE COST AND PAYMENT DEAR 952.216-7, ALLOWABLE COST AND PAYMENT (DEC 2002); ALTERNATE II

I.25 FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option

provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 60 days.

- I.26 FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JULY 2005)**
- I.27 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)**
- I.28 FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JUL 2005) – ALTERNATE II (OCT 2001)**
- I.29 FAR 52.219-16 LIQUIDATED DAMAGES – SUBCONTRACTING PLAN (JAN 1999)**
- I.30 FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM – DISADVANTAGED STATUS AND REPORTING (OCT 1999)**
- I.31 FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**
- I.32 FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)**

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed “zero” or the overtime premium is paid for work—

- (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
- (2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
- (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
- (4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—

- (1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other

data of the affected unit sufficient to permit the CO to evaluate the necessity for the overtime;

- (2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
- (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and
- (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

I.33 FAR 52.222-3 CONVICT LABOR (JUN 2003)

I.34 FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JUL 2005)

I.35 FAR 52.222-6 DAVIS-BACON ACT (JUL 2005)

I.36 FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

I.37 FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

I.38 FAR 52.222-9 APPRENTICES AND TRAINEES (JULY 2005)

I.39 FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

I.40 FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (JULY 2005)

I.41 FAR 52.222-12 CONTRACT TERMINATION—DEBARMENT (FEB 1988)

I.42 FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

I.43 FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

I.44 FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

I.45 FAR 52.222-16 APPROVAL OF WAGE RATES (FEB 1988)

I.46 FAR 52.222-17 LABOR STANDARDS FOR CONSTRUCTION WORK—FACILITIES CONTRACTS (FEB 1988)

I.47 FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

- I.48 FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**
- I.49 FAR 52.222-26 EQUAL OPPORTUNITY (APR 2002)**
- I.50 FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)**
- I.51 FAR 52.222-30 DAVIS-BACON ACT—PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD) (DEC 2001)**
- I.52 FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)**
- I.53 FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**
- I.54 FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)**
- I.55 FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)**
- I.56 FAR 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (JUL 2005)**
- I.57 FAR 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This statement is for information only: It is not a wage determination.

Employee Class	Monetary Wage – Fringe Benefits
_____	_____
_____	_____
_____	_____
_____	_____

- I.58 FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (APR 2006)**

I.59 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) ALTERNATE I (JUL 1995)

- (a) “Hazardous material,” as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) The Offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as national stock number or special item number. This information shall be included on the material safety data sheet submitted under this contract.

Material (if none, insert none)

Identification No.

- (c) The apparently successful Offeror, by acceptance of the contract, certifies that the list in paragraph (b) of this clause is complete. This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful Offeror agrees to submit, for each item as required prior to award, a material safety data sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful Offeror is the actual manufacturer of these items. Failure to submit the material safety data sheet prior to award may result in the CO and resubmit the data.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause or the certification submitted under paragraph (c) of this clause, the Contractor shall promptly notify the CO and resubmit the data.

- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
 - (1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to—
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
 - (3) The government is not precluded from using similar or identical data acquired from other sources.
- (i) Except as provided in paragraph (i)(2) the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
 - (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDSs to consignees in advance of receipt of shipments by consignees, if authorized in writing by the CO.
 - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If

affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

I.60 FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)

I.61 FAR 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

I.62 FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (AUG 2000)

(a) Definitions. As used in this clause-

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of recovered material.

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall-

- (1) Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of postconsumer material content; and
- (2) Submit this estimate to _____ [CO complete in accordance with agency procedures].

I.63 FAR 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)

I.64 FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)

I.65 FAR 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

I.66 FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

I.67 FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

I.68 FAR 52.224-2 PRIVACY ACT (APR 1984)

I.69 FAR 52.225-1 BUY AMERICAN ACT – SUPPLIES (JUN 2003)

I.70 FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (MAR 2005)

I.71 FAR 52.227-10 FILING OF PATENT APPLICATIONS (APR 1984)

- (a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified “Secret” or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.
- (b) Before filing a patent application in the United States disclosing any subject matter of this contract classified “Confidential,” the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.
- (c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.
- (d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.
- (e) The Contractor agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

I.72 FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on pages _____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the “Rights in Data—General” clause contained in this contract) in and to the technical data contained in the proposal dated _____, upon which this contract is based.

- I.73 FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)**
- I.74 FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 2005)**
- I.75 FAR 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)**
- I.76 FAR 52.232-17 INTEREST (JUN 1996)**
- I.77 FAR 52.232-18 AVAILABILITY OF FUNDS (APR 1984)**
- I.78 FAR 52.232-22 LIMITATION OF FUNDS (APR 1984)**
- I.79 FAR 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)**
- I.80 FAR 52.232-25 PROMPT PAYMENT (OCT 2003) – ALTERNATE I (FEB 2002)**
- I.81 FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER – CENTRAL CONTRACTOR REGISTRATION (OCT 2003)**
- I.82 FAR 52.233-1 DISPUTES (JUL 2002) – ALTERNATE I (DEC 1991)**
- I.83 FAR 52.233-2 SERVICE OF PROTEST (AUG 1996) – AS MODIFIED BY DEAR 952.233-2 SERVICE OF PROTEST**
 - (a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the CO (addressed as follows) by obtaining written and dated acknowledgment of receipt from Ms. Irma Brown, U. S. Department of Energy, Savannah River Operations, P. O. Box A, Aiken, SC 29802.
 - (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.
 - (c) Another copy of a protest filed with the General Accounting Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for

Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

- I.84 FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) – ALTERNATE I (JUN 1985)**
- I.85 FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)**
- I.86 FAR 52.234-4 EARNED VALUE MANAGEMENT SYSTEM (JULY 2006)**
- I.87 FAR 52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)**
- I.88 FAR 52.236-19 ORGANIZATION AND DIRECTION OF THE WORK (APR 1984)**
- I.89 FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**
- I.90 FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)**
- I.91 FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)**
- I.92 FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)**
- I.93 FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)**
- I.94 FAR 52.242-13 BANKRUPTCY (JUL 1995)**
- I.95 FAR 52.243-2 CHANGES – COST REIMBURSEMENT (AUG 1987) – ALTERNATE II (APR 1984) & ALT III & ALT IV**
- I.96 FAR 52.243-7 NOTIFICATION OF CHANGES (APR 1984)**
- I.97 FAR 52.244-2 SUBCONTRACTS (AUG 1998) ALTERNATE I (JAN 2006)**

(a) Definitions. As used in this clause—

“Approved purchasing system” means a contractor’s purchasing system that has been reviewed and approved in accordance with part 44 of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the CO’s written consent for the Contractor to enter into a particular subcontract.

“Subcontract” means any contract, as defined in FAR subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime

contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- (b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.
- (c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.
- (d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—
 - (1) is of the cost-reimbursement, time-and-materials, or labor-hour type; or
 - (2) is fixed-price and exceeds—
 - (i) for a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or
 - (ii) for a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
- (e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the CO's written consent before placing the following subcontracts:

See the Clause in Section H entitled "Critical Subcontracts – Designation and Consent."

- (f) (1) The Contractor shall notify the CO reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:
 - (i) a description of the supplies or services to be subcontracted;
 - (ii) identification of the type of subcontract to be used;
 - (iii) identification of the proposed subcontractor.
 - (iv) the proposed subcontract price;

- (v) the subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;
- (vi) the subcontractor's disclosure statement or certificate relating to cost accounting standards when such data are required by other provisions of this contract; and
- (vii) a negotiation memorandum reflecting—
 - (A) the principal elements of the subcontract price negotiations;
 - (B) the most significant considerations controlling establishment of initial or revised prices;
 - (C) the reason cost or pricing data were or were not required;
 - (D) the extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) the extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) the reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - (G) a complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the CO reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

- (g) Unless the consent or approval specifically provides otherwise, neither consent by the CO to any subcontract nor approval of the contractor's purchasing system shall constitute a determination—
 - (1) of the acceptability of any subcontract terms or conditions;
 - (2) of the allowability of any cost under this contract; or
 - (3) to relieve the Contractor of any responsibility for performing this contract.
- (h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (i) The Contractor shall give the CO immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the government.
- (j) The government reserves the right to review the contractor's purchasing system as set forth in FAR subpart 44.3.
- (k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

None.

I.98 FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

I.99 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2004)

- (a) Definitions. As used in this clause—

“Commercial item” has the meaning contained in the clause at 52.202-1, definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:
 - (i) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for special disabled veterans, veterans of the Vietnam era, and other eligible veterans (Dec 2001) (38 U.S.C. 4212(a)).
 - (iv) 52.222-36, Affirmative Action for workers with disabilities (Jun 1998) (29 U.S.C. 793).
 - (v) 52.247-64, Preference for Privately Owned U.S.-flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.100 FAR 52.245-5 GOVERNMENT PROPERTY (COST REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (MAY 2004)

I.101 FAR 52.245-19 GOVERNMENT PROPERTY FURNISHED “AS IS” (APR 1984)

I.102 FAR 52.246-25 LIMITATION OF LIABILITY – SERVICES (FEB 1997)

I.103 FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)

I.104 FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUNE 2003)

I.105 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)

I.106 FAR 52.247-67 SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (JUN 1997)

I.107 FAR 52.247-68 REPORT OF SHIPMENT (REPSHIP) (FEB 2006)

I.108 FAR 52.248-1 VALUE ENGINEERING (FEB 2000)

I.109 FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004)

I.110 FAR 52.249-14 EXCUSABLE DELAYS (APR 1984)

I.111 FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

I.112 FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)

I.113 FAR 52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

- (a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the provision.
- (b) The use in this solicitation of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) provision with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

I.114 FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.
- (b) The use in this solicitation or contract of any _____.[*insert regulation name*] (48 CFR _____) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

I.115 FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

I.116 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

- (a) The Contractor shall comply with the requirements of the “DOE Contractor Employee Protection Program” at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.
- (b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

I.117 DEAR 952.204-2 SECURITY (MAY 2002)

- (a) Responsibility. It is the Contractor’s duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE Security Regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the Contractor’s possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the Contractor or any person under the Contractor’s control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and proposed period of retention. If the retention is approved by the CO, the security provisions of the contract shall continue to be applicable to the matter retained. Special Nuclear Material shall not be retained after the completion or termination of the contract.
- (b) Regulations. The Contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.
- (c) Definition of classified information. The term “classified information” means restricted data, formerly restricted data, or national security information.
- (d) Definition of restricted data. The term “restricted data” means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of Special Nuclear Material; or (3) the use of Special Nuclear Material in the production of energy, but shall not include data declassified or removed from the restricted data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.
- (e) Definition of formerly restricted data. The term “Formerly Restricted Data” means all data removed from the restricted data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

- (f) Definition of national security information. The term “National Security Information” means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States government, that has been determined pursuant to Executive Order 12356 or prior orders to require protection against unauthorized disclosure, and which is so designated.
- (g) Definition of Special Nuclear Material (SNM). SNM means:
 - (1) Plutonium, Uranium Enriched in the Isotope 233 or in the Isotope 235, and any other material which pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be Special Nuclear Material, but does not include source material; or
 - (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Security clearance of personnel. The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE’s regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor’s control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)
- (j) Foreign Ownership, Control or Influence (FOCI).
 - (1) The Contractor shall immediately provide the cognizant Security Office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the certificate pertaining to foreign interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the CO.
 - (2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue

risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

- (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the CO shall provide in writing to safeguard any classified information or special nuclear material.
- (4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE facility clearance or submit a completed certificate pertaining to foreign interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the CO. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- (5) The CO may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The CO may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

I.118 DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve

as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

I.119 DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994)

- (a) In connection with any activities in the performance of this contract, the contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the contractor by written notice as sensitive foreign nations. The contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the CO if the contractor determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

- (b) The provisions of this clause shall be included in any subcontracts.

I.120 DEAR 952.204-73 FACILITY CLEARANCE (MAY 2002)

NOTICES

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

- (a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328
- (1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance, the Offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package.
 - (2) Information submitted by the Offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.
 - (3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the CO written notification of any changes in the extent and nature of FOCI which could affect the Offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the Offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange

Commission, the Federal Trade Commission, or the Department of Justice must also be furnished concurrently to the cognizant security office.

(b) Definitions

(1) Foreign Interest means any of the following:

- (i) A foreign government, foreign government agency, or representative of a foreign government;
- (ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and
- (iii) Any person who is not a citizen or national of the United States.

(2) Foreign Ownership, Control, or Influence (FOCI) means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon:

- (1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;
- (2) A contract or proposed contract containing the appropriate security clauses;
- (3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;
- (4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;

- (5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;
 - (6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and
 - (7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.
- (d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the Offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The CO may require the Offeror to submit such additional information as deemed pertinent to this determination.
- (e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.
- (f) Except as otherwise authorized in writing by the CO, the provisions of any resulting contract must require that the contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime contractor or the CO for the prime contract.

**NOTICE TO OFFERORS - CONTENTS REVIEW
(PLEASE REVIEW BEFORE SUBMITTING)**

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the Offeror should review the FOCI submission to ensure that:

- (1) The Standard Form 328 has been signed and dated by an authorized official of the company;

- (2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;
- (3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;
- (4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and
- (5) A summary FOCI data sheet.

NOTE: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

I.121 DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000)

- (a) The Contractor must cooperate with the department in releasing unclassified information to the public and news media regarding doe policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the CO and appropriate DOE public affairs personnel in accordance with procedures defined by the CO.
- (b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.
- (c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.

- (d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.
- (e) Unless prohibited by law, and in accordance with procedures defined by the CO, the Contractor must notify the CO and appropriate DOE public affairs personnel of communications or contacts with members of Congress relating to the effort performed under the contract.
- (f) In accordance with procedures defined by the CO, the Contractor must notify the CO and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.
- (g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the department and fully and accurately credit the department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

I.122 DEAR 952.204-76 CONDITIONAL PAYMENT OF FEE OR PROFIT – SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION (JAN 2004)

a. General.

- (1) The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) including compliance with applicable law, regulation, and DOE directives. The term "contractor" as used in this clause to address failure to comply shall mean "contractor or contractor employee."
- (2) In addition to other remedies available to the Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.
- (3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted data or other classified information pursuant to the degrees specified in paragraph (c) of this

clause.

(b) Reduction Amount.

(1) If in any period (see 48 CFR 952.204-76 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (see 48 CFR 904.402(c)). The mitigating factors include, but are not limited to, the following:

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of safeguarding Restricted Data and other classified information and compliance in related security areas.

(2) (i) For purposes of this clause, (2)(i) Except in the case of performance-based firm-fixed-price contracts (see paragraph (b)(3) of this clause), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of 3 months to run sequentially for the entire term of the contract (i.e., from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that

is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

- (3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the safeguarding of Restricted Data and other classified information.

(c) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:

- (1) First Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, or any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or weapons data high risk nuclear weapons-related data OR.

Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, or any classification level of information in a Special Access SAP, Program (SAP), identified as sensitive compartmented information (SCI), or weapons data information identified as SCI, or high risk nuclear weapons-related data.

Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified

as Top Secret, or any classification level of information in a Special Access Program (SAP), identified as sensitive compartmented information (SCI), or SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
- (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
- (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).
- (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
- (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

- (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.
- (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

I.123 DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)

- (a) DOE intends to use U.S. Government license tags.
- (b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the contractor shall furnish the DOE the documentation required by the State to acquire such tags.

I.124 DEAR 952.208-70 PRINTING (APR 1984)

The Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8" by 11 inches one side only, one color. A requirement is defined as a single publication document.

- (1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.
- (2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the Contractor shall notify the CO in writing and obtain the CO's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a joint committee on printing authorized federal printing plant.
- (3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

- (4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

I.125 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)

- (a) Purpose. The purpose of this clause is to ensure that the contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

- (i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of (CO see DEAR 9.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the CO, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.
- (ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the CO, in which case the restriction in this subparagraph shall not apply.

- (iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.
- (2) Access to and use of information.
 - (i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the CO it shall not:
 - (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;
 - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
 - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
 - (ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
 - (iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) Disclosure after award.

- (1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the CO. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
- (2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the CO, DOE may terminate this contract for default.
- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the CO and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the CO may grant such a waiver in writing.

I.126 DEAR 952.215-70 KEY PERSONNEL (DEC 2000)

- (a) The personnel listed below or elsewhere in this contract, **H.5 Key Personnel**, are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

[Insert List of Key Personnel unless listed elsewhere in the contract]

I.127 DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)

- (a) Notwithstanding any other provision of the contract, the prior approval of the CO shall be obtained when, in performance of this contract, the Contractor acquires or proposes to acquire use of real property by:
 - (1) purchase, on the government's behalf or in the Contractor's own name, with title eventually vesting in the government.
 - (2) lease, and the government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.
 - (3) acquisition of temporary interest through easement, license or permit, and the government funds the entire cost of the temporary interest.
- (b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the CO.
- (c) The substance of this clause, including this paragraph (a), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

I.128 DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)

Individual Occupational Radiation Exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the Contractor until disposal is authorized by DOE or at the option of the Contractor delivered to DOE upon completion or termination of the contract. If the Contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

I.129 DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than federal employees, or information from federal employees which is to be used for statistical compilations of general public interest, the paperwork reduction act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

- (b) The Contractor shall request the required OMB clearance from the CO before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the CO. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the CO.

I.130 DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)

- (a) Definition.

Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

- (b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

I.131 DEAR 952.231-71 INSURANCE-LITIGATION AND CLAIMS (APR 2002)

- (a) The Contractor may, with the prior written authorization of the CO, and shall, upon the request of the government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The Contractor shall proceed with such litigation in good faith and as directed from time to time by the CO.
- (b) The Contractor shall give the CO immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the CO, in writing, the Contractor shall furnish immediately to the CO copies of all pertinent papers received by the Contractor with respect to

such action. The Contractor, with the prior written authorization of the CO, shall proceed with such litigation in good faith and as directed from time to time by the CO.

- (c)
 - (1) Except as provided in paragraph (c)(2) of this clause, the Contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the CO.
 - (2) The Contractor may, with the approval of the CO, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.
 - (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the CO may require or approve and with sureties and insurers approved by the CO.
- (d) The Contractor agrees to submit for the CO's approval, to the extent and in the manner required by the CO, any other bonds and insurance that are maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the CO.
- (e) Except as provided in paragraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the Contractor shall be reimbursed—
 - (1) for that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
 - (2) for liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or limitation of funds clause of this contract.
- (f) The government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) Notwithstanding any other provision of this contract, the Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)—

- (1) which are otherwise unallowable by law or the provisions of this contract; or
 - (2) for which the Contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the CO.
- (h) In addition to the cost reimbursement limitations contained in 48 CFR part 31, as supplemented in 48 CFR part 931, and notwithstanding any other provision of this contract, the Contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements), shall not be reimbursed if such liabilities were caused by contractor managerial personnel's—
 - (1) willful misconduct,
 - (2) lack of good faith, or
 - (3) failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.
- (i) The burden of proof shall be upon the Contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the CO challenges a specific cost or informs the Contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.
- (j)
 - (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the Contractor so as to be separately identifiable. If the CO provisionally disallows such costs, then the Contractor may not use funds advanced by DOE under the contract to finance the litigation.
 - (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the CO.
 - (3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.

- (4) The term “contractor’s managerial personnel” is defined in the property clause in this contract.
- (k) The Contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the Contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—
 - (1) immediately notify the CO and promptly furnish copies of all pertinent papers received;
 - (2) authorize department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
 - (3) authorize department representatives to settle the claim or to defend or represent the Contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department Contractor, the Department may require the Contractor to be represented by common counsel. Counsel for the Contractor may, at the Contractor’s own expense, be associated with the Department representatives in any such claim or litigation.

I.132 DEAR 952.233-4 NOTICE OF PROTEST FILE AVAILABILITY (SEP 1996)

- (a) If a protest of this procurement is filed with the General Accounting Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective Offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to FAR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103- 355. Such request must be in writing and addressed to the CO for this procurement.
- (b) Any Offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective Offerors in accordance with the requirements of FAR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, Offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

I.133 DEAR 952.233-5 AGENCY PROTEST REVIEW (SEP 1996)

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the CO prior to filing a protest.

I.134 DEAR 952.245-5 GOVERNMENT PROPERTY (COST REIMBURSEMENT, TIME-AND-MATERIALS, OR LABOR-HOUR CONTRACTS)

Modify FAR 52.245-5 by adding "and DOE Acquisition Regulation Subpart 945.5" after the reference to FAR Subpart 45.5 in paragraphs (e)(1) and (e)(2) of the clause.

I.135 DEAR 952.247-70 FOREIGN TRAVEL (DEC 2000)

Contractor foreign travel shall be conducted pursuant to the requirements contained in DOE Order 551.1, Official Foreign Travel, or any subsequent version of this order in effect at the time of award.

I.136 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005)

- (a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.
- (d) (1) Indemnification. To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be

increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) (1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
 - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:
 1. Negligence;
 2. Contributory negligence;
 3. Assumption of risk; or

4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
- (B) Any issue or defense as to charitable or governmental immunity; and
- (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
- (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
- (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:
 - (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which

results from a nuclear incident intentionally and wrongfully caused by the claimant

- (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of claims. The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.

- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.
- (j) Criminal penalties. Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

I.137 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (DEC 2000)

- (a) The Contractor shall take advantage of the travel discounts offered to federal contractor employee travelers by Amtrak, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the Contractor employee to furnish them a letter of identification signed by the authorized CO.
- (b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

- (c) Discount rail service. Amtrak voluntarily offers discounts to federal travelers on official business and sometimes extends those discounts to federal contractor employees.
- (d) Hotels/Motels. Many lodging providers extend their discount rates for federal employees to federal contractor employees.
- (e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to federal travelers on official business. Some car rental companies extend those discounts to federal contractor employees.
- (f) Obtaining travel discounts.
 - (1) To determine which vendors offer discounts to government contractors, the Contractor may review commercial publications such as the official airline guides official traveler, innovata, or national telecommunications. The Contractor may also obtain this information from GSA Contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.
 - (2) The vendor providing the service may require the government contractor to furnish a letter signed by the CO. The following illustrates a standard letter of identification.

(Official agency letterhead)

TO: Participating Vendor

SUBJECT: Official Travel of Government Contractor

(Full name of traveler), the bearer of this letter is an employee of **(company name)** which has a contract with this agency under government contract **(contract number)**. During the period of the contract **(give dates)**, and with the approval of the contract vendor, the employee is eligible and authorized to use available travel discount rates in accordance with government contracts and/or agreements. Government contract city pair fares are not available to contractors.

Signature, title and telephone number of Contracting Officer

I.138 DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2000)

- (a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- (b) The contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

I.139 DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000) (DEVIATION)

- (a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (Appendix D/List B) may be appended to this contract for information purposes. Omission of any applicable law or regulation from Appendix D/List B does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.
- (b) The Contractor will perform the work of this Contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this Contract as "Appendix D", until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described in the clause of this contract, entitled, "Application of DOE Contractor Requirements Documents."

- (c) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.
- (d) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

I.140 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.
- (b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.
 - (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records.

[70 FR 37010 Jun. 28, 2005]

- (2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
- (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and

- (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
- (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
 - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
 - (ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- (c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
- (f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described

therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

- (g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
 - (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
 - (2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or
 - (3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

I.141 DEAR 970.5223-1 -- INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

- (a) For the purposes of this clause,
 - (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (2) Employees include subcontractor employees.
- (b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:
 - (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

- (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:
- (1) Define the scope of work;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.

- (d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.
- (e) The contractor shall submit to the CO documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the CO. Guidance on the preparation, content, review, and approval of the System will be provided by the CO. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the CO may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the CO issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the CO. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. The contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

- (i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may choose not to require the subcontractor to submit a Safety Management System for the contractor's review and approval.

I.142 DEAR 970.5227-1 RIGHTS IN DATA—FACILITIES (DEC 2000) (DEVIATION)

(a) Definitions.

- (1) “Computer data bases”, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) “Computer software”, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) “Data”, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term “data” does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) “Limited rights data”, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The government’s rights to use, duplicate, or disclose limited rights data are as set forth in the limited rights notice of subparagraph (e) of this clause.
- (5) “Restricted computer software”, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The government’s rights to use, duplicate, or disclose restricted computer software are as set forth in the restricted rights notice of paragraph (f) of this clause.

- (6) “Technical data”, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
 - (7) “Unlimited rights”, as used in this clause, means the right of the government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.
- (b) Allocation of rights.
- (1) The government shall have:
 - (i) ownership of all technical data and computer software first produced in the performance of this contract;
 - (ii) unlimited rights in technical data and computer software specifically used in the performance of this contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE work for others program;
 - (iii) the right to inspect technical data and computer software first produced or specifically used in the performance of this contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
 - (iv) the right to have all technical data and computer software first produced or specifically used in the performance of this contract delivered to the government or otherwise disposed of by the Contractor, either as the CO may from time to time direct during the progress of the work or in any event as the CO shall direct upon completion or termination of this contract. The Contractor agrees to leave a copy of such data at the facility or plant, to which such data relate, and to make available for access or to deliver to the government such data upon request by the CO. If such data are limited rights data or restricted computer software, the rights of the government in such data shall be governed solely by the provisions of paragraph (e) of this clause (“Rights in Limited Rights Data”) or

paragraph (f) of this clause (“Rights in Restricted Computer Software”); and

- (v) the right to remove, cancel, correct, or ignore any markings not authorized by the terms of this contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the contractor of the action taken.

(2) The Contractor shall have:

- (i) the right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and
- (ii) the right to use for its private purposes, subject to patent, security or other provisions of this contract, data it first produces in the performance of this contract, except for data in DOE’s Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this contract have been met as of the date of the private use of such data.

- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted material.

- (1) The Contractor shall not, without prior written authorization of the patent counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the contractor.
- (2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by

others without first granting or obtaining at no cost a license therein for the benefit of the government of the same scope as set forth in paragraph (c)(1) of this clause. If the contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the contractor shall obtain the written authorization of the CO to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting.

- (1) Unless otherwise directed by the CO, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled “Rights in Data-General” at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE patent counsel, and the Contractor shall not acquire rights in a subcontractor’s limited rights data or restricted computer software, except through the use of alternates II or III, respectively, without the prior approval of DOE patent counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.
- (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the government, necessary to fulfill the Contractor’s obligations to the government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the government such rights, the Contractor shall:
 - (i) promptly submit written notice to the CO setting forth reasons or the subcontractor’s refusal and other pertinent information which may expedite disposition of the matter, and
 - (ii) not proceed with the subcontract without the written authorization of the CO.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a

subcontractor's limited rights data or restricted computer software for their private use.

(e) Rights in limited rights data.

Except as may be otherwise specified in this contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the government an irrevocable, nonexclusive, paid-up license by or for the government, in any limited rights data of the contractor specifically used in the performance of this contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the contractor at the time of initial delivery to the government or a representative of the government, such data shall not be used within or outside the government except as provided in the "limited rights notice" set forth. All such limited rights data shall be marked with the following "limited rights notice":

Limited rights notice

These data contain "limited rights data," furnished under contract number. _____ with the United States Department of Energy which may be duplicated and used by the government with the express limitations that the "limited rights data" may not be disclosed outside the government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) this "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) this "limited rights data" may be disclosed to other contractors participating in the government's program of which this contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts including use by DOE or its contractors as necessary for continued performance of the work or operation of the facility and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) this "limited rights data" may be used by the government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

- (e) release to a foreign government, or instrumentality thereof, as the interests of the United States government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

- (f) Rights in restricted computer software.

- (1) Except as may be otherwise specified in this contract as data which are not subject to this paragraph, the contractor agrees to and does hereby grant to the government an irrevocable, nonexclusive, paid-up, license by or for the government, in any restricted computer software of the Contractor specifically used in the performance of this contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the government or a representative of the government, such data shall not be used within or outside the government except as provided in the "restricted rights notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy contract no._____. It may not be used, reproduced, or disclosed by the government except as provided in paragraph (b) of this notice.
- (b) This computer software may be:
 - (1) used or copied for use in or with the computer or computers for which it was acquired, including use at any government installation to which such computer or computers may be transferred;
 - (2) used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
 - (3) reproduced for safekeeping (archives) or backup purposes;
 - (4) modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this notice, provided the government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above

(d) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the restricted rights notice on restricted computer software, the following short-form notice may be used in lieu thereof:

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the long form notice of DOE contract number _____ with _____.

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol r and the clause date (mo/yr), in brackets or a box, a [r-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the government as described in the long form notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this contract contains any variation to the rights in the long form notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the government without disclosure prohibitions and with unlimited rights, unless the contractor includes the following statement with such copyright notice “unpublished-rights reserved under the copyright laws of the United States.”

- (g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the government under any patent.

I.144 DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002)

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- (b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the CO. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.
 - (1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed \$100,000 at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services).
 - (2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed \$100,000.
 - (3) Omission of an authorization and consent clause from any subcontract, including those valued less than \$100,000 does not affect this authorization and consent.

I.145 DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

- (a) The Contractor shall report to the CO promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the CO, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

- (c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed \$100,000.

I.146 DEAR 970.5227-6 PATENT INDEMNITY—SUBCONTRACTS (DEC 2000)

Except as otherwise authorized by the CO, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

I.147 DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002)

- (a) During performance of this contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the CO prior to the execution of any license, the following information relating to each separate item of royalty:
 - (1) Name and address of licensor;
 - (2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
 - (3) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (4) Percentage or dollar rate of royalty per unit;
 - (5) Unit price of contract item;
 - (6) Number of units;
 - (7) Total dollar amount of royalties; and
 - (8) A copy of the proposed license agreement.
- (b) If specifically requested by the CO, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and in identification of applicable claims of specific patents or other basis upon which royalties are payable.
- (c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The term also includes

any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or subcontracts, or the copying of such data or data that is copyrighted.

- (d) The Contractor shall furnish to the CO, annually upon request, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder.
- (e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the CO. If the CO determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the CO.
- (f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to, a patent for which the Contractor makes a royalty or other payment.
- (g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties to which this clause applies, the Contractor shall promptly notify the Contracting Office of that fact and shall promptly reimburse the for any refunds received or royalties paid after having received notice of such relief.
- (h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

I.148 DEAR 970.5227-10 PATENT RIGHTS – MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (AUG 2002)

- (a) Definitions.
 - (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.
 - (2) Exceptional circumstance subject invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii) and in accordance with 37 CFR 401.3(e).

- (3) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (*7 U.S.C. 2321 et seq.*).
 - (4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
 - (5) Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (*26 U.S.C. 501(c)*) and exempt from taxation under section 501(a) of the Internal Revenue Code (*26 U.S.C. 501(a)*) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
 - (6) Patent Counsel means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.
 - (7) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
 - (8) Small business firm means a small business concern as defined at section 2 of Pub. L. 85-536 (*15 U.S.C. 632*) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, are used.
 - (9) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, *7 U.S.C. 2401(d)*) shall also occur during the period of contract performance.
- (b) Allocation of Principal Rights.
- (1) Retention of title by the Contractor. Except for exceptional circumstance subject inventions, the contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and *35 U.S.C. 203*. With respect to any subject invention in which the Contractor retains title, the Federal government

shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

- (2) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a contractor through a determination of greater rights in accordance with subparagraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.
 - (i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:
 - (A) uranium enrichment technology;
 - (B) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and
 - (C) national security technologies classified or sensitive under Section 148 of the Atomic Energy Act (*42 U.S.C. 2168*).
 - (ii) Inventions made under any agreement, contract or subcontract related to the following are exceptional circumstance subject inventions:
 - (A) DOE Steel Initiative and Metals Initiative;
 - (B) U.S. Advanced Battery Consortium; and
 - (C) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).
 - (iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.
- (3) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix [Insert Reference] to this contract. DOE reserves the right to unilaterally amend this contract to

identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations [*81060] under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

- (4) Contractor request for greater rights in exceptional circumstance subject inventions. The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional circumstance subject invention by submitting such a request in writing to Patent Counsel at the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.
- (5) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in an exceptional circumstance subject invention, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may, in its discretion, grant or refuse to grant such a request by the Contractor employee-inventor.
- (6) Government assignment of rights in Government employees' subject inventions. If a Government employee is a joint inventor of a subject invention or of an exceptional circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304-1(d). The rights assigned to the Contractor are subject to any provision of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license, except that the Contractor shall file its initial patent application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee.

- (c) Subject Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.
- (1) Subject invention disclosure. The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s) and all sources of funding by B&R code for the invention. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. The disclosure shall include a written statement as to whether the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning any nonelectable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.
 - (2) Election by the Contractor. Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.
 - (3) Filing of patent applications by the Contractor. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any 1-year statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding

initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

- (4) Contractor's request for an extension of time. Requests for an extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2) and (3) may, at the discretion of Patent Counsel, be granted.
 - (5) Publication Approval. During the course of the work under this contract, the Contractor or its employees may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of DOE or the Contractor, approval for release or publication shall be secured from the Contractor personnel responsible for patent matters prior to any such release or publication. Where DOE's approval of publication is requested, DOE's response to such requests for approval shall normally be provided within 90 days except in circumstances in which a domestic patent application must be filed in order to protect foreign rights. In the case involving foreign patent rights, DOE shall be granted an additional 180 days with which to respond to the request for approval, unless extended by mutual agreement.
- (d) Conditions When the Government May Obtain Title.

The Contractor will convey to the DOE, upon written request, title to any subject invention-

- (1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within sixty (60) days after learning of the failure of the Contractor to disclose or to elect within the specified times.
- (2) In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in subparagraph (c) above, but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.
- (3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

- (4) If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.
- (e) Minimum Rights of the Contractor and Protection of the Contractor's Right to File.
 - (1) Request for a Contractor license. The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor's license will normally extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the contractor's business to which the invention pertains.
 - (2) Revocation or modification of a Contractor license. The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and DOE licensing regulations at 10 CFR Part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.
 - (3) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR

part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

- (f) Contractor Action to Protect the Government's Interest.
- (1) Execution of delivery of title or license instruments. The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:
 - (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and
 - (ii) convey title to DOE when requested under subparagraphs (b) or paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.
 - (2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
 - (3) Notification of discontinuation of patent protection. The contractor will notify the Patent Counsel of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
 - (4) Notification of Government rights. The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

- (5) Invention Identification Procedures. The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the CO so that the CO may evaluate and determine their effectiveness.
- (6) Invention Filing Documentation. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:
 - (i) the filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
 - (ii) an executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
 - (iii) the patent number, issue date, and a copy of any issued patent claiming the subject invention.
- (7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at 35 *U.S.C.* 205 and 37 CFR Part 40.
- (g) Subcontracts.
 - (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
 - (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the CO, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 *U.S.C.* 202 and subparagraph (b)(2) of this clause. The subcontractor retains all rights provided for the contractor in the patent rights clause at 48 CFR 952.227-11.

- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause.
- (4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.
- (5) Subcontractor refusal to accept terms of patent clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the CO stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the CO.
- (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the CO in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the CO, the Contractor shall furnish a copy of a subcontract.
- (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.
- (h) Reporting on Utilization of Subject Inventions. The Contractor agrees to submit to DOE on request, periodic reports, no more frequently than annually, on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such

information to persons outside the Government without permission of the Contractor.

- (i) **Preference for United States Industry.** Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- (j) **March-in Rights.** The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any DOE supplemental regulations to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that-
 - (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
 - (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
 - (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) **Special Provisions for Contracts With Nonprofit Organizations.** If the Contractor is a nonprofit organization, it agrees that-
 - (1) DOE approval of assignment of rights. Rights to a subject invention in the United States may not be assigned by the Contractor without the approval of DOE, except where such assignment is made to an organization which

has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions of this clause as the Contractor.

- (2) Small business firm licensees. It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(2).
- (3) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.
- (l) Communications. The Contractor shall direct any notification, disclosure or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity.
- (m) Reports.
 - (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.
 - (2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the

Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

- (n) Examination of Records Relating to Subject Inventions.
 - (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the CO or any authorized representative may examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor, which the CO or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.
 - (2) Unreported inventions. If the CO is aware of an invention that is not disclosed by the Contractor to DOE, and the CO believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.
 - (3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.
 - (4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.
- (o) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.
- (p) Atomic Energy.

- (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
 - (2) Patent agreements. Except as otherwise authorized in writing by the CO, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.
- (q) Classified Inventions.
 - (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the CO.
 - (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.
 - (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.
- (r) Patent Functions. Upon the written request of the CO or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.
- (s) Educational Awards Subject to *35 U.S.C. 212*. The Contractor shall notify the CO prior to the placement of any person subject to *35 U.S.C. 212* in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph

(b)(3) of this clause or agreements other than funding agreements. The CO may disapprove of any such placement.

- (t) Annual Appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

I.149 DEAR 970.5227-11 PATENT RIGHTS--MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000)

(a) Definitions.

- (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.
- (2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.
- (3) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (*7 U.S.C. 2321*, et seq.).
- (4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (5) Patent Counsel means DOE Patent Counsel assisting the contracting activity.
- (6) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (7) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, *7 U.S.C. 2401(d)*) shall also occur during the period of contract performance.

(b) Allocation of Principal Rights

- (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(2) of this clause or by a request for foreign patent rights in accordance with subparagraph (d)(2) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.
 - (2) Greater rights determinations. The Contractor, or an Contractor employee-inventor after consultation with the Contractor and with the written authorization of the Contractor in accordance with DOE patent waiver regulations, may request greater rights, including title, in an identified subject invention than the nonexclusive license and the foreign patent rights provided for in paragraph (d) of this clause, in accordance with the DOE patent waiver regulations. Such a request shall be submitted in writing to Patent Counsel with a copy to the CO at the time the subject invention is first disclosed to DOE in accordance with subparagraph (c)(2) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the CO for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor or Contractor employee-inventor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor pursuant to a determination of greater rights are subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency), and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (c) Subject Invention Disclosures.
- (1) Contractor procedures for reporting subject inventions to Contractor personnel. Subject inventions shall be reported to Contractor personnel responsible for patent matters within six (6) months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. Accordingly, the Contractor shall establish and maintain effective procedures for ensuring such prompt identification and timely disclosure of subject inventions to Contractor personnel responsible for patent matters, and the procedures shall include the maintenance of laboratory notebooks, or equivalent records, and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and the maintenance of records demonstrating compliance with such procedures. The Contractor shall submit a written description of such procedures to the CO, upon request, for evaluation of the effectiveness of such procedures by the CO.

- (2) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the CO within two (2) months after the subject invention is reported to Contractor personnel responsible for patent matters, in accordance with subparagraph (c)(1) of this clause, or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:
- (i) the contract number under which the subject invention was made;
 - (ii) the inventor(s) of the subject invention;
 - (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
 - (iv) the date and identification of any publication, on sale or public use of the invention;
 - (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
 - (vi) a statement indicating whether the subject invention concerns exceptional circumstances pursuant to *35 U.S.C. 202(ii)*, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
 - (vii) all sources of funding by Budget and Resources (B&R) code; and
 - (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements. Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of *42 U.S.C. 5908*.
- (3) Publication after disclosure. After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject

invention or of any expected or on sale or public use of the subject invention, known by the Contractor.

- (4) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
 - (5) Contractor procedures for reporting subject inventions to DOE. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the CO, upon request, for evaluation of the effectiveness of such procedures by the CO.
 - (6) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR 401.13.
- (d) Minimum Rights of the Contractor.
- (1) Contractor License.
 - (i) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(2) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of

the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

- (ii) Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine the Contractor's license is non-transferrable, on a case-by-case basis.
 - (iii) Revocation or modification of a Contractor license. DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensee, or its domestic subsidiaries or affiliates achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.
 - (iv) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR Part 404 and DOE licensing regulations.
- (2) Contractor's right to request foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention in the foreign country, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee. Such a request shall be submitted in writing to the Patent Counsel as part of the disclosure required by subparagraph (c)(2) of this clause, with a copy to the DOE CO, unless a longer period is authorized in

writing by the CO for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request, and may consider whether granting the Contractor's request best serves the interests of the United States.

(e) Examination of Records Relating to Inventions.

- (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the CO or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the CO or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
- (2) Unreported inventions. If the CO is aware of an invention that is not disclosed by the Contractor to DOE, and the CO believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.
- (3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(f) Subcontracts.

- (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
- (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the CO, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202(a)(ii).
- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (f)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified

to identify the parties, in any contract for experimental, developmental, demonstration or research work.

- (4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.
 - (5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the CO stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the CO.
 - (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the CO in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the CO, the Contractor shall furnish a copy of a subcontract.
 - (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the CO.
- (g) Atomic Energy.
- (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
 - (2) Patent Agreements. Except as otherwise authorized in writing by the CO, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (g)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.
- (h) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this

contract, to ensure such release or publication does not adversely affect the patent interests of DOE or the Contractor.

- (i) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity, with a copy of the communication to the CO.
- (j) Reports.
 - (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (c)(1) and (c)(5) of this clause.
 - (2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.
- (k) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.
- (l) Classified Inventions.

- (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the CO.
 - (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.
 - (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.
- (m) Patent Functions. Upon the written request of the CO or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.
- (n) Annual Appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

**I.150 DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000) (ALTERNATE I)
(DEC 2000)**

NOTE: The following clause is applicable to the incumbent management and operating contractor at the Savannah River Site:

- (a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before the end of the transition period, in conjunction with the management and operation of Liquid Waste Program as described in Section C, shall be deemed incurred under Contract No. DE-AC09-96SR18500.
- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

I.151 DEAR 970.5231-4 PRE-EXISTING CONDITIONS (DEC 2000) (ALTERNATE II) (DEC 2000)

- (a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility after the end of the transition period. To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to the end of the transition period, the contractor shall be responsible in accordance with the terms and conditions of this contract.
- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.
- (c) The contractor has the duty to inspect the facilities and sites and timely identify to the contracting officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The contractor has the responsibility to take corrective action, as directed by the contracting officer and as required elsewhere in this contract.